

### **REMARKS**

Claims 1-21 are currently pending. Claims 1-21 stand rejected. Claims 1-13 and 19-21 stand rejected as obvious under 35 U.S.C. § 103(a) by U.S. Patent No. 5,774,170 (“Hite”) in view of U.S. Patent No. 5,774,170 (“Byers”). Claims 14-18 stand rejected as obvious under 35 U.S.C. § 103(a) by U.S. Patent No. 5,774,170 (“Hite”) in view of U.S. Patent No. 5,774,170 (“Byers”) and further in view of U.S. Patent Application No. 2003/0221191 (“Khusheim”).

Reconsideration of the application is respectfully requested in light of the amendment and the following remarks.

#### **Rejection of Claims 1-13, and 19-21 under 35 U.S.C. § 103(a)**

Claims 1-13, and 19-21 stand rejected as obvious under 35 U.S.C. § 103(a) as by U.S. Patent No. 5,774,170 (“Hite”) in view of U.S. Patent No. 5,774,170 (“Byers”).

Applicants respectfully traverse the rejections, and request reconsideration. The Office action largely ignores Applicants’ remarks regarding the improper combination of Hite and Byers. Simply put, one skilled in the art could not combine the two because it would frustrate both of the Hite and Byers inventions.

Hite requires the use of the CID codes in order to target entire commercial advertisements to prospective viewers. A CID is defined as a Commercial Identifier. As the Office action points out, when a match in CID codes is found the complete advertisement is presented to the viewer. The CID is appended to the commercial itself. Hite, Col. 3, ll. 43-44. Applicants submit that the CID is fundamentally different from the assembly information recited in Claim 1 to assemble and create a targeted advertisement comprising individual partial segments. The assembly information of the recited claims is more than merely a commercial identifier. According to Applicants’ specification:

The assembly information can include data representing time segments; the media segments, and conditions. This assembly information forms a network which maintains a matrix-like overview of the media segments, their timing, and how they may be combined with other media segments in order to assemble the messages. In one illustrative embodiment, the message for a specific targeted audience is assembled in a set top box for a television receiver contemporaneously with displaying the message to the specific targeted audience. Col. 2, para. [0018].

Not only does the CID of Hite represent only an identifier appended to an entire commercial, it is attached to the commercial during an initial processing step and not contemporaneously with displaying the message.

Byers also fails to teach the use such assembly information. Byers concerns replacement of a discrete portion of a video image for product placement, as an example. The Byers system analyzes a spatial portion of the video image frame to mark an element (image pattern) to be replaced. The system then inserts a new image over the top of the original element, or removes the original pixels and replaces with new pixels, to create a new image into the video. Byers, Col. 3, ll. 1-4. The Byers system requires a complex pixel by pixel analysis to mark and define the original element, as well as complex image processing to ensure the overlay image is integrated into the video stream (i.e., special processing if an object obstructs or passes in front of the overlay image, etc.)

One skilled in the art could not combine these two disclosures “for the common knowledge purpose of dynamically alerting video images to allow customization of a digital stream. For one, the process of dynamic targeted advertisement is not common knowledge. Second, Byers does not teach “changing elements within a stream to fit user profiles” – as the Office action states. Byers teaches replacing a portion of a video image with another partial image (such as replacing the brand on a beverage can from Coca-Cola to Pepsi). The problems each reference seeks to solve are completely different. Byers concerns a spatial replacement of an object “cut-out” of an image. Hite concerns analyzing a completed commercial, appending to it information about that commercial and substituting in the entire commercial based on some criteria.

Even if Byers and Hite were combined, the combination would not anticipate claim 1. A combination of the teachings of Hite and Byers would yield a system in which entire commercials were transmitted to a viewer and that commercial has a spatial portion of the video image (Pepsi can) spatially altered with another image (Coca-Cola can). The combination would not assemble multiple media segments into a matrix-based template in order to create a completed commercial.

Applicants further submit that the Office action fails to provide any substantive evidence or reasoning as to why such a combination would be made. The conclusory statement that “it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the reference for the common knowledge purpose of dynamically

alerting video images to allow customization of a digital stream based upon characteristics associated with a user” provides insufficient support or evidence of a proper combination under 35 U.S.C. Sect. 103 and fails to provide any objective evidence from the prior art or elsewhere that shows the inventive subject matter recited in independent claim 1 would be obvious to a person having ordinary skill in the art.

Applicants respectfully submit that independent claim 1 is patentably distinct from Hite and Byers since neither reference, alone or in combination, disclose each and every feature of claim 1 as arranged in the claim. Applicants submit that dependent claims 2-13 and 19-21 are also patentably distinct by virtue of their dependence on an allowable base claim.

**Rejection of Claims 14-18 under 35 U.S.C. § 103(a)**

Claims 14-18 stand rejected as obvious under 35 U.S.C. § 103(a) as by U.S. Patent No. 5,774,170 (“Hite”) in view of U.S. Patent No. 5,774,170 (“Byers”) and further in view of U.S. Patent Application No. 2003/0221191 (“Khusheim”).

Based on the foregoing remarks and in light of claims 14-18 dependence on allowable base claim 1, Applicants submit that claims 14-18 are patentably distinct from the cited combination.

**CONCLUSION**

In view of the foregoing, Applicants respectfully submit that all the claims are in condition for allowance and request favorable action by the Examiner in the form of a Notice of Allowance.

If, in the Examiner’s opinion, a telephonic interview would expedite the favorable prosecution of the present application, the undersigned attorney would welcome the opportunity to discuss any outstanding issues, and to work with the Examiner toward placing the application in condition for allowance.

Respectfully submitted,

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